

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Robert Harsh,  
Petitioner

v. Case No. 1:08-cv-433

Warden, Chillicothe  
Correctional Institution,  
Respondent

**ORDER**

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed September 24, 2009 (Doc. 90).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's petition for writ of habeas corpus is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claims alleged in the petition, which this Court has concluded are waived and thus barred from review on procedural grounds, because "jurists of reason would not find it debatable as to whether this Court is correct in its procedural rulings" under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85

(2000).

A certificate of appealability also will not issue with respect to the Fourth Amendment claim alleged in Ground Eight of the petition, which is not cognizable under *Stone v. Powell*, 428 U.S. 465, 494-95 (1976), or with respect to any of petitioner's claims that were addressed on the merits in the Report & Recommendation; a certificate of appealability will not issue because petitioner has not shown that reasonable jurists could debate whether any such claims should have been resolved in a different manner or that the issues presented are "adequate to deserve encouragement to proceed further." *See Miller-El v. Cockrell*, 537 U.S. 322, 323-324 (2003) (quoting *Slack*, 529 U.S. at 483-84 (in turn quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983))); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

This action is closed.

Date: October 15, 2009

s/Sandra S. Beckwith  
Sandra S. Beckwith, Senior Judge  
United States District Court